

MONTANA LEGISLATIVE HISTORY

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Chapter 504 19 95

Bill H _____ S 402

Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) 3/6 ✓ C

3/13 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 2/16 _____ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes ✓ No

Committee _____

Report _____

Chapter

Page

	STRATION AND ENFORCEMENT OF THE REGISTRATION; PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN EDUCATION PROGRAM; SETTING REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS; PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; REQUIRING INDEPENDENT CONTRACTORS TO OBTAIN AN EXEMPTION; AMENDING SECTIONS 37-71-211, 39-3-703, 39-3-705, 39-3-706, AND 39-71-120, MCA; AND REPEALING SECTION 39-3-704, MCA.	2438
501	(Senate Bill No. 371; Grosfield) AN ACT DEFINING "OUTSTANDING RESOURCE WATERS"; IDENTIFYING CERTAIN STATE WATERS AS OUTSTANDING RESOURCE WATERS; ESTABLISHING A PROCESS FOR STATE CLASSIFICATION OF OTHER WATERS AS OUTSTANDING RESOURCE WATERS; IDENTIFYING ACTIVITIES THAT ARE EXEMPT FROM THE WATER QUALITY NONDEGRADATION REVIEW PROCESS; AND AMENDING SECTIONS 75-5-103, 75-5-301, AND 75-5-303, MCA.	2452
502	(Senate Bill No. 388; Harp) AN ACT PROVIDING FOR AN INTEGRATED MEDICAID MANAGED CARE PROGRAM; PROVIDING A PUBLIC POLICY ON MEDICAID MANAGED CARE; PROVIDING DEFINITIONS; SPECIFYING REQUIREMENTS FOR MEDICAID MANAGED CARE NETWORKS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE FOR DIFFERING BENEFITS FOR PERSONS ENROLLED IN THE PROGRAM; SPECIFYING REQUIREMENTS FOR MANAGED HEALTH CARE ENTITIES; PROVIDING REQUIREMENTS RELATING TO ENROLLEES OF THE PROGRAM; PROVIDING FOR PAYMENT REDUCTIONS AND ADJUSTMENTS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SEEK NECESSARY WAIVERS; PROVIDING FOR OVERSIGHT BY THE LEGISLATIVE AUDITOR; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 33-1-102, MCA; AND PROVIDING AN EFFECTIVE DATE.	2461
503	(Senate Bill No. 389; Tveit) AN ACT CLARIFYING THE ADMINISTRATION AND REGULATION OF GAME FARMS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF LIVESTOCK; REVISING GAME FARM PROVISIONS REGARDING LICENSURE, FEES, DEFINITIONS, INSPECTIONS, IMPORTATION, AND REPORTING; CREATING THE GAME FARM ADVISORY COUNCIL; AMENDING SECTIONS 81-1-102, 87-4-406, 87-4-408, 87-4-410, 87-4-411, 87-4-414, 87-4-415, 87-4-417, 87-4-419, 87-4-422, 87-4-424, AND 87-4-426, MCA; AND PROVIDING AN EFFECTIVE DATE.	2471
504	(Senate Bill No. 402; Eck) AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN EFFECTIVE DATE.	2480
505	(Senate Bill No. 406; Nelson) AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO GRANT CLOSURE TO NONCOMMERCIAL FARM AND RESIDENTIAL UNDER-	

SB 402 INTRODUCED BY ECK

GENERALLY REVISE CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE
EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT
SERVICES

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
SERVICES

2/14	INTRODUCED		
2/15	FIRST READING		
2/15	REFERRED TO JUDICIARY		
2/16	HEARING		
2/16	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/21	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO JUDICIARY		
3/06	HEARING		
3/08	REVISED FISCAL NOTE PRINTED		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	89	7
3/29	3RD READING CONCURRED	92	8
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	48	0
4/05	3RD READING AMENDMENTS CONCURRED	50	0
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 504		
	EFFECTIVE DATE: 07/01/95		

SB 403 INTRODUCED BY MILLER, ET AL.

RELATE TO HEALTH CARE ACCESS AND COST CONTROL

2/14	INTRODUCED		
2/15	FISCAL NOTE REQUESTED		
2/15	FIRST READING		
2/15	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/18	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/21	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
2/21	REFERRED TO BUSINESS & INDUSTRY		
2/22	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

SB 404 INTRODUCED BY STANG

EXCLUDE FROM CLASS NINE PROPERTY CERTAIN ALLOCATIONS
RELATED TO LEASEHOLD ADDITIONS AND DRILLING COSTS OF
CENTRALLY ASSESSED NATURAL GAS COMPANIES

2/15	INTRODUCED		
2/15	REFERRED TO TAXATION		
2/15	FISCAL NOTE REQUESTED		
2/15	FIRST READING		
2/21	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		

SENATE BILL NO. 402

INTRODUCED BY

Eck

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; ENACTING FEDERAL LEGISLATION AS REQUIRED; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, it is necessary to draft a bill specifically enacting federally required legislation in order to maintain adequate levels of federal funding and to present proposed program improvements for medical support enforcement in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of social and rehabilitation services. The department should adopt rules for expedited procedures, appropriate fines and penalties, and methods by which to encourage cooperation from parents, employers, unions, and health benefit providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be known and cited as the "Medical Support Reform Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 25] is to promote the

for enrollment or provides only for limited enrollment of children with preexisting conditions.

NEW SECTION. Section 19. Medical assistance eligibility. A health benefit plan may not use information pertaining to medical assistance eligibility under Title XIX of the federal Social Security Act as a factor in enrolling a child in a plan or in making payments for benefits on behalf of the covered child. A health benefit plan may not impose any restrictions or requirements on recipients of medical assistance or the department different from those applicable to any other plan participant.

NEW SECTION. Section 20. Void health benefit plans. A health benefit plan provision that denies or restricts coverage for a child in violation of a provision of [sections 15 through 18] is void as against public policy.

NEW SECTION. Section 21. Penalty imposed by tribunal. (1) In addition to any other penalty provided by [sections 1 through 25] or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed \$200 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly violated a medical support order or a provision of or a rule adopted under [sections 1 through 25].

(2) The civil penalty must be deposited as provided in [section 13].

(3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

NEW SECTION. Section 22. Duties of parents -- consequences of noncompliance. (1) An obligated parent shall promptly execute and deliver to the provider of individual insurance, to a health benefit plan, or to another proper party all forms and instruments necessary to ensure the child's timely enrollment and continuous participation in any individual insurance or plan ordered by the medical support order. An obligated parent shall timely submit claims for processing, verification, and payment. Intentional delay or interference with enrollment or with the timely submission for processing, verification, and payment of a claim is punishable as provided in [section 21] and by an award of costs and attorney fees to an opposing party.

(2) An obligated parent shall provide the other parent, the department, and the third-party custodian with identification cards or other methods for access to coverage, including but not limited to numbers, codes, or other references applicable to the individual insurance, health benefit plan, or group through which the child

receives coverage. Intentional delay or failure to provide information is punishable as provided in [section 21] and by an award of costs and attorney fees to an opposing party.

(3) If a party receives a reimbursement payment from individual insurance or from a health benefit plan but is not the party who has paid or is paying the underlying bill of the health service provider, the party receiving the payment shall promptly pay over the proceeds to the proper party. In addition to any applicable penalty for theft, conversion, civil contempt, or other wrongdoing, the amount of the payment may be entered as a judgment in favor of the proper party and against the party failing to promptly pay over the reimbursement.

(4) An obligated parent who defaults on a medical support order by failing to obtain individual insurance or a health benefit plan or who permits the individual insurance or plan coverage to lapse without securing a comparable replacement is liable for all of the child's medical expenses and shall indemnify the other parent, the department, or the third-party custodian for the cost of obtaining health benefit coverage and for all medical expenses of the child. The obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

(a) no reasonable-cost or cost-beneficial individual insurance coverage or health benefit plan was available for the child during the period of time involved and the other parent, the department, or the third-party custodian has received notice of the nonavailability;

(b) the individual insurance coverage or plan ceased to be available for reasons wholly unrelated to the conduct of the obligated parent, replacement coverage has not been available, and timely written notice of the nonavailability has been given to the other parent, the department, or the third-party custodian; or

(c) the other parent or third-party custodian has obtained health coverage for the child and all parties have entered into an enforceable written agreement to share the costs of the coverage.

(5) An obligated parent who provides individual insurance coverage or a health benefit plan that is deficient under the requirements of the medical support order is liable, including liability by indemnification, for all of the child's medical expenses that should have been covered but were not and for the cost to the other parent, the department, or the third-party custodian of obtaining coverage that complies with the order. The obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

(a) the coverage provided for the child has been the best available during the periods of time involved and timely written notice regarding the coverage available was given to the other parent, the department, or the third-party custodian;

(b) benefits have been reduced for reasons wholly unrelated to the conduct of the obligated parent,

1 better coverage has not been available, and timely written notice has been given to the other parent,
2 department, or the third-party custodian; or

3 (c) the other parent or the third-party custodian has obtained coverage for the child and all parties have
4 entered into an enforceable written agreement to share the costs of the coverage.

5 (6) Any liability for medical costs and expenses incurred under this section may be entered as a judgment
6 for unpaid support in favor of the party or agency paying the same and against the obligated parent.

7 (7) The consequences of noncompliance with a medical support order apply, to the extent possible,
8 a judgment, decree, or support order that requires a parent to obtain medical or health insurance coverage for
9 a child or to pay for a child's medical care and that was entered:

10 (a) by a tribunal prior to enactment of [sections 1 through 25]; or

11 (b) by a court or administrative agency of competent jurisdiction in another state or territory.

12
13 **NEW SECTION. Section 23. Health coverage -- notice of intent to purchase.** (1) The department or
14 court on request of the department may issue an order requiring the obligated parent to appear and show cause
15 why an order should not be issued permitting the department to purchase individual insurance or health benefit
16 plan coverage for the obligated parent's child and requiring recovery of the premium from the obligated parent
17 if the tribunal finds that:

18 (a) a medical support obligation has been established by order of a tribunal;

19 (b) the obligated parent has become delinquent by failing to provide individual insurance or a health
20 benefit plan or lets the individual insurance or health benefit plan lapse;

21 (c) there is no payor to whom an order of enrollment under [section 12] applies;

22 (d) the child is currently eligible for medical assistance benefits under Title XIX of the federal Social
23 Security Act, as amended; and

24 (e) other individual insurance or a health benefit plan is available for the child and can be purchased
25 at a reasonable cost.

26 (2) Prior to issuing or requesting an order to show cause, the department shall give the obligated parent
27 notice of the intent to purchase coverage under this section and an opportunity to enroll the child in individual
28 insurance or a health benefit plan within 30 days after notice is received by the obligated parent.

29 (3) If the obligated parent provides written proof within the 30 days after receipt of the notice that the
30 child is enrolled in individual insurance or a health benefit plan, no further action may be taken by the

SENATE JUDICIARY

Page 12

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

	2/06	2/09		TABLED ON 02/09	VOTE:		
SB0316	BISHOP, AL		PROVIDE DUI SENTENCING ENHANCEMENT FOR DUI	2/14			
	2/07	2/15		DO PASS	VOTE:		2/15
SB0318	BENEDICT, STEVE		ESTABLISH STATUTE OF LIMITATIONS FOR ACCOUNTANT'S NEGL & BREACH OF CONTRACT				
	2/07	2/13		TABLED ON 02/14	VOTE:		
SB0333	BISHOP, AL		REVISE PROBATIONARY DRIVER'S LICENSE PROCEDURES UNDER DUI LAWS	3/15			
	2/08	2/15		DO PASS	VOTE:		2/15
SB0340	CRIPPEN, BRUCE		AUTHORIZE LIMITED LIABILITY PARTNERSHIPS	2/16			
	2/09	2/16		PASS AS AMENDED	VOTE:		2/18
SB0342	BARTLETT, SUE		LOCATE LAW ENFORCEMENT ACADEMY IN HELENA				
	2/09				VOTE:	FINANCE & CLAIMS	
SB0350	VAN VALKENBURG, FRED		EMPLOYER NOTICE OF THEFT FROM EMPLOYER BY PROBATIONER OR PAROLEE	2/15			
	2/10	2/15		DO PASS	VOTE:		2/15
SB0353	HALLIGAN, MIKE		REVISE GUARDIAN AD LITEM IN FAMILY MATTERS/SPECIAL MASTERS IN CRIMINAL CASES	2/13			
	2/10	2/13		PASS AS AMENDED	VOTE:		2/13
SB0387	BECK, TOM		CLARIFY WATER RIGHTS ADJUDICATION; EXPAND THE WATER CLAIM APPEAL PROCESS	3/16			
	2/27	3/04	3/4 SUB	PASS AS AMENDED	VOTE:		3/07
SB0402	ECK, DOROTHY		MEDICAL SUPPORT ORDERS IN DIVORCE AND OTHER PROCEEDINGS	2/16			
	2/15	2/16		PASS AS AMENDED	VOTE:		2/18
SJ0003	BENEDICT, STEVE		ASSERT STATES RIGHTS	1/17			
	1/02	1/10		PASS AS AMENDED	VOTE:		1/17
SJ0006	BROWN, BOB		LEGISLATURE'S SUPPORT OF AND INTENT FOR THE CONFERENCE OF THE STATES	2/8			
	1/23	2/07		PASS AS AMENDED	VOTE:		2/09
SJ0007	DOHERTY, STEVE		LEG AUDITOR TO DO PERFORMANCE AUDIT OF SUPREME CRT ADMIN OFF/CERTAIN SYSTEMS	2/15			

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on February 16, 1995,
at 10:00 AM

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 308, SB 340, SJR 16, SB 402
Executive Action: SJR 16, SB 340, SB 402,
SB 206, SB 212, SB 314, SB 308

HEARING ON SB 308

Opening Statement by Sponsor:

SENATOR SHARON ESTRADA, Senate District 7, Billings, presented SB 308. In a civil action, reasonable attorney fees as determined by the court will be awarded to the prevailing party. The intent of this bill is to unclog the court system, put a stop to frivolous lawsuits and eventually bring down insurance rates. SB 308 is a form of tort reform.

compensation premiums which would be due or the unemployment insurance taxes as well.

Closing by Sponsor:

SENATOR CRIPPEN offered no additional remarks in closing.

HEARING ON SB 402

Opening Statement by Sponsor:

SENATOR DOROTHY ECK, Senate District 15, Bozeman, presented SB 402. This is the Montana Medical Support Reform Act. This bill was developed by the SRS in cooperation with their Medicaid Service Division, The Insurance Commissioner's Office and the State Department of Labor and Industry. They have had substantial input from insurance companies and small businesses. This bill will strengthen the ability to collect child support and strength the access to health care for our children. In August of 1993, the Omnibus Budget Reconciliation Act (OBRA) was passed. There are mandatory provisions in that bill which require us to pass legislation implementing it by July 1, 1995. One of the major problems in Montana is controlling the increase of Medicaid as a part of our budget. Montana gets approximately \$6 to \$7 of federal aid for every \$1 we spend. This is still a substantial amount to us. The provisions of SB 402 are intended to conserve the expenditure of Medicaid funds. This is done by attempting to assure that children of divorced or separated parents have access to reasonable health insurance coverage provided by their parents. The obligation to provide health insurance coverage will be enforced by the SRS Child Support Enforcement Division to a greater extent than it is currently in existing law.

Mary Ann Wellbank, Administrator of the Child Support Enforcement Division in the Department of SRS, spoke in support of SB 402. They have worked closely with the Medicaid Division in SRS, the Department of Labor, the Insurance Commissioner's Office, health care providers, the insurance industry and small employers in Montana to come up with a bill which meets the federally mandated requirements of OBRA and also works well for Montana and does not place additional burdens on small business. Medicaid is only to be a safety net for parents who are unable to provide medical insurance and do not have adequate income to do so. This bill gives health care providers and insurers consistent guidance on how to deal with divided families. Currently the non-custodial parent may carry insurance on children but when the custodial parent submits expenses to the insurance company for reimbursement, the insurer issues the checks directly to the non-custodial parent and the custodial parent never recovers that money. They do not intend to adopt rules for anything but the expedited procedures. The bill makes the parents of the children responsible for the support of the children. It ensures that children are covered by private insurance when that is available

at reasonable cost to the parents. It shouldn't be the role of Medicaid to insure every child in the state when the parents can pay for insurance. This bill does not extend coverage for certain individuals under any plan where coverage does not now exist for any other person covered under the plan. Because the bill requires parents to enroll their children if they have health benefits available, it may expand the class of children who are now allowed coverage under the health benefit plan. Children born out of wedlock are required to be covered under certain circumstances. Children who are not declared as dependents on taxes are required to be covered under this bill but it does not expand the insurance that an insurer must offer. If an insurer has certain exceptions in the plan, those exceptions will still continue to exist. Sections 5, 6, and 7 are relocated and consolidated from other sections of the Uniform Parentage Act, the Administrative Procedures Act and the Uniform Marriage and Divorce Act. This will all go into Title 40 so its apparent to insurers and employers dealing with child support and medical support issues what governs their operations. One addition, is the prohibition to count a child's receipt or eligibility for Medicaid as insurance. This is required by OBRA. The court or the administrative agency cannot consider the child's eligibility for a public assistance program as a factor in determining a parent's financial ability to afford health insurance. Medicaid is not a substitute for health insurance when the court finds that health insurance is available to an obligated parent at a reasonable cost. Section 6 describes the contents of a medical support order. OBRA requires a plan be deemed reasonable if it is available through an employer or other group participation. This bill goes one step further than OBRA because it allows the court or the administrative agency some guidelines in which they might find the cost is reasonable such as when the cost of the insurance exceeds 25% of the child support order. For example, the grounds keeper of a major corporation who has insurance available but only nets \$900 a month, won't be required to get insurance at \$300 a month. Section 7 describes the mandatory provision of a medical support order. It is not required by OBRA but provides a method to address medical support in a single order without having to return to a tribunal for a decision later on or repeatedly in any situation. In a support order, it describes the type of insurance which may be available at the time. If that insurance is no longer available, the support order could give alternatives so the parents would not need to keep returning to the tribunal for a different order every time the parents change employment. Section 8 discusses the persistence and duration of the obligation. This section is required by OBRA and provides for medical coverage for children for the duration of a monetary support obligation. The medical support obligation runs as long as the financial support obligation does. It restates that custody and visitation are separate issues. It also holds a guardian free from liability for any medical expenses for a child which that person has not voluntarily agreed to pay. Section 9 is the effect of the order on health benefit plans. It is

required by OBRA. It makes whoever administers the plan responsible to cooperate to get a child enrolled, to keep a child enrolled and to get the benefits paid to the appropriate person. If the obligated parent is required to provide insurance and the custodial parent wants to use that insurance, the insurer is required to communicate with the custodial parent even though the obligated parent is the one who has insurance. Section 10 is required by OBRA. It allows another party, other than the parent required to provide medical coverage, to enroll a child and otherwise work directly with the plan administrator even if the obligated parent is uncooperative. Section 12 is required by OBRA and it allows the plan to cooperate with anyone trying to obtain or maintain coverage or benefits for the minor child under a medical support order without fear of legal action by the obligated parent. It allows the plan to withhold premiums from an obligated parent's check when given a medical support order, even if the obligated parent tells the plan not to withhold the premiums. It gives the plan administrator guidance about when it can properly terminate coverage on a child. Section 13 is the obligation of the payor. This is also required by OBRA. It protects the payor of an obligated parent's income when the payor properly pays for insurance coverage for a minor child under a medical support order. Section 14 is required by OBRA. It makes it easy for plans to work with the appropriate party to get benefits to the child. Section 15 is required by OBRA. It allows payment to go to the provider directly or to the parent or other party providing they have paid a reimbursable expense. There is an amendment to Section 16. The insurers were concerned that it would expand coverage to newborn children when they did not already cover that. The language they would like to use is, "The coverage will only cover the birth when the insurer would otherwise have been obligated to pay had the existence of the birth been known." Some insurance plans cover a newborn child immediately but within 30 days the parent needs to make the decision whether or not to enroll the child. Their intent is not to require the insurer to go back a year and enroll the child from birth to forever. Their intent is, if they had the 30 days in which to enroll the child and paternity is established in an out of wedlock birth within one year, they would be able to go back and obtain the newborn coverage and the 30 day after coverage if that is what the plan provided as long as the premiums were paid for that period. She feels this is acceptable to the industry. Section 17 refers to adoptive children and refers to existing law. Section 18 is required by OBRA. It limits the reasons for which a plan cannot enroll a child. Section 19 is the key to OBRA. It relates to saving Medicaid dollars. If there is other coverage available that coverage is primary and Medicaid is secondary. Section 22 covers the duties of the parents. It is not required by OBRA, but it provides even greater methods to get parents to cooperate in getting coverage for their children. Section 23 is not required by OBRA but is required to provide an obligated parent or an intended obligated parent the right of due process. Section 24 speaks to expedited enforcement procedures to ensure that the parent gets due process

without any unnecessary delays. The other amendment is on page 10, line 18. It covers penalties to a payor. The word "knowingly" needs to be included. It is not their intention to assess any penalties against a payor who unknowingly violates this section. The last amendment is coordination instructions. A fiscal note has not been requested; however, they feel it is necessary. The Child Support Enforcement Division would need sufficient funding to add two additional FTEs plus contracted hearing officers. One FTE to become familiar with insurance plans, because the order needs to be very specialized as to the type of insurance offered and the other FTE would help with the hearings. This would be approximately \$50,000 general fund in 96 and \$43,000 in 97. Medicaid savings would cover that.

Ed Grogan, Montana Medical Benefit Plan, the Montana Medical Benefit Trust, and the Montana Business and Health Alliance, spoke in support of SB 402. He referred to page 11, Section 16, line 13, and commented that 33-22-301 deals with coverage of newborns under Montana law. In (4) of the section it states, "If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that modification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date of birth in order to have the coverage continue beyond such 31 day period." They want to strike the word "1 year" on line 13 and insert "31 days". This will be consistent with current law. From an insurers standpoint it makes very good sense. It is hard for them to construe that a newborn would be a year old. It is difficult to go back one year and provide coverage for a child.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR HALLIGAN, referring to page 14, Section 23, stated that in that section it states that if the obligated parent does not pay the insurance the Department is authorized to purchase an individual insurance policy and then be reimbursed from the individual. He asked what funds would be used for that?

Ms. Wellbank answered this would be a child who is covered by Medicaid and Medicaid could go out and make the purchase of insurance if they felt that was economically feasible rather than cover it out of the other public funds. Medicaid would purchase a private insurance policy.

SENATOR HALLIGAN commented that he is dealing with a divorce in his practice. They are both working poor. Neither one has access to insurance. Referring to page 5, line 19, they would be required to pay \$50. To whom would they pay the \$50.

Ms. Wellbank commented this is only if public assistance is involved. They pay it to the Department to offset the cost of Medicaid.

SENATOR BARTLETT stated that in relation to SB 29 there were concerns that the custodial parent would not provide the social security number, of a child or other information which was essential to enroll the child in a health plan that the noncustodial parent was willing to provide. She asked if there was anything in SB 402 which would give the Department, the Child Support Enforcement Division or a court in the state of Montana some recourse against the custodial parent who does not cooperate.

Ms. Wellbank stated there was nothing specific in SB 402 which would give some recourse; however, the bill says that the Department may provide the information. If the Department had the social security number of the child, it would have to provide the information to get the child covered. The noncustodial parent could request the social security number through the Social Security Administration. In the hearing, the Administrative Hearing Officer could enforce that by holding a hearing and ordering the custodial parent to provide the information necessary for insurance coverage.

SENATOR BARTLETT, in referring to Section 21, wondered if it would be worthwhile to include a requirement that the custodial parent is obligated to cooperate. This could be a part of every medical support order issued.

Ms. Wellbank stated that could be done by administrative order. It would not need a rule. Their rulemaking will not include penalties. That could be a part of it.

SENATOR BARTLETT commented that courts would be left out of the obligation to include that kind of a provision.

SENATOR JABS commented that the stated purpose of the bill is to improve efficiency and effectiveness of the Child Support Enforcement Division. However, two additional FTEs will be needed. He believed there will be no money saved by this bill.

Ms. Wellbank commented that there is a long term Medicaid savings which will be a fairly large savings. Short term they cannot immediately identify the impact. In the Child Support Enforcement Division they will need two additional FTEs to know what the insurance requirements are and to help with the hearings. They should be able to save a little less than \$50,000 each year in general fund. Over the long term it should save a lot more in general fund and Medicaid.

Closing by Sponsor:

SENATOR ECK, referring to the amendment on page 11 which Mr. Grogan suggested, stated that the intent there is to deal with situations where the paternity might not be established for up to a year. It would be a way of requiring that the father's insurance would pick up these costs through that period of time. Ms. Wellbank is working on an amendment which should be acceptable. This bill will provide insurance and health care for children who are not now covered. It will also provide some real savings in Medicaid.

{Tape: 2; Side: A}

HEARING ON SJR 16

Opening Statement by Sponsor:

SENATOR J. D. LYNCH, Senate District 19, Butte, presented SJR 16. He commented that an amendment would be need on page 2 to correct a mistake. The federal government will be taking some serious steps to eliminate frivolous appeals involving the death sentence. It is a very serious matter. The last execution was 1943. Some people are totally opposed to using the ultimate weapon of the death penalty. In a poll, 85% of the people in Montana who participated believed that for some crimes the death penalty must be used. The attempt of this resolution is to let Congress know that as the representatives of the people in the legislature from 150 districts urge them to come up with some meaningful reform to limit death penalty appeals.

Proponents' Testimony:

Beth Baker, Department of Justice, stated a significant amount of their appellate bureau workload is federal habeas cases. They now have eight capital cases they are working on. The problem of successive habeas petitions is particularly acute in capital cases. The closer to the date of execution, the more petitions are filed. The U.S. House of Representatives has passed a bill calling for significant habeas reform including a one year statute of limitations from the date the judgment becomes final as well as limits on successive petitions. The legislation passed in the House states that successive petitions will not be allowed at all if they have to do with issues which have previously been raised before the court. As to issues which have not been raised before, there will be an innocence component before the petition will be allowed to be filed. She suggested the amendment on page 2 read "6-month period following the date on which the conviction becomes final". That would include the situation wherein a defendant appeals to the Montana Supreme Court and then petitions the U. S. Supreme Court for a writ of certiorari. The time would start running the date the U.S. Supreme Court acts on that petition assuming its denied or the date that the Supreme Court renders its final judgment. That

Vote: The motion FAILED 2-9 on roll call vote.

Motion/Vote: SENATOR GROSFIELD moved SB 308 BE TABLED. The motion CARRIED on roll call vote with SENATORS BAER and ESTRADA voting "NO".

EXECUTIVE ACTION ON 402

Discussion: Valencia Lane commented that her understanding of the proposed amendments would be that they would substitute the existing Section 16 which is in the bill regarding newborn children. This would be Amendment No. 1. Section 2 on page 1, line 21, strikes the second sentence and adds "to adopt rules for expedited procedures". Amendment No. 3 puts in a "knowingly" standard on page 10, line 18. Amendment No. 4 is a codification instruction.

Motion: SENATOR HALLIGAN MOVED TO AMEND SB 402.

Discussion: Ms. Wellbank clarified that the first amendment is the newborn children section. This is the amendment Mr. Grogan mentioned in his testimony. They worked with him on the amendment and believe other insurers will support this as well. It states that a health benefit plan shall provide the coverage required by the insurance code to a newborn child. It does not change existing law. They only intend to adopt rules for administrative procedures and do not need the additional language in the Statement of Intent regarding rulemaking. The second amendment would strike the entire second sentence and add to the first sentence "to adopt rules for expedited procedures." The third amendment is on page 10, line 18. The section talks about a payor violating this section is subject to the contempt powers. They intended to say a payor "knowingly" violating this section. The word "knowingly" would be inserted. The last amendment is a codification instruction.

SENATOR BARTLETT questioned if there would be anything in the bill which would affect the insurance code and need to be codified in that section.

Ms. Wellbank stated that this bill would not change the insurance code.

Vote: The motion CARRIED UNANIMOUSLY on oral vote.

Motion: SENATOR HALLIGAN SB 402 DO PASS AS AMENDED.

Discussion: SENATOR BISHOP commented it was ironic that Medicaid would go into the private sector to buy insurance. This would leave one to believe the system is not working very well.

SENATOR HOLDEN asked how important it was to pass this bill to comply with federal law.

SENATOR BARTLETT commented the law being referenced is the Omnibus Budget and Reconciliation Act of 1993. This was the major deficient reduction act by the federal government in 1993. The intent behind the child support requirements in OBRA and in this bill is to reduce, to the maximum extent possible, the use of public assistance. In respect to this bill, this would address replacing Medicaid assistance that a parent who is a noncustodial parent, or in the case of medical support perhaps both parents, should be providing to their children. It directly goes to the issue of whether or not we want parents to be responsible for the support and the medical coverage of their children regardless of whether they are married or divorced.

Vote: The motion **CARRIED** on oral vote with **SENATORS BAER** and **ESTRADA** voting "NO".

EXECUTIVE ACTION ON SB 206

Motion: **SENATOR HALLIGAN** MOVED TO AMEND SB 206.

Discussion: **SENATOR HALLIGAN** explained the amendments. Pursuant to the Chairman's direction in terms of his discussion with **SENATOR BURNETT**, the decision had been made to remove everything in the bill with exception of the video language. The amendments did not remove all the language if some of it was new and reasonable, **EXHIBIT 5**. The major change is that they did not allow the criminal charges to be filed before a child could be removed. Those provisions were removed from the bill. They deleted some of the definitional sections which no longer applied once the language was removed regarding filing criminal charges. On page 6 his definition of sexual abuse of touching of an infant was left in except for the last part. A portion of line 20 and lines 21, and 22 were deleted because that had reference to broad language. The video portion is at the bottom of page 9. The original bill wanted every examination to be videotaped. They changed the tenor of that because there are many statements made to teachers, neighbors, and friends in which there would never be a videotape. That statement could not be used in court if it was not videotaped. They stated that, "If the child's interview is videotaped an unedited videotape and audio track must be made available, upon request," to the family. His concern was that there would not be an opportunity to view that. If the police or social workers make one, it would be available. On line 17, they left a major change. "(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must develop corroborative information in order for the investigation to continue."

Valencia Lane explained a couple of clerical changes. On page 10, line 10, the stricken word "and" needs to be reinserted. At the bottom of page 11, line 30, there is a stricken word "without" and "with" is inserted. The word "with" needs to be stricken and the word "without" needs to be reinserted.

DATE _____

2-16-95

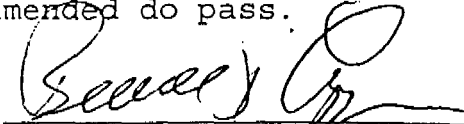
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 16, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 402 (first reading copy -- white), respectfully report that SB 402 be amended as follows and as so amended do pass.

Signed: 

Senator Bruce Chippin, Chair

That such amendments read:

1. Page 1, line 21.

Following: "services"

Insert: "to adopt rules for expedited procedures"

2. Page 1, lines 21 through 23.

Following: "." on line 21

Strike: remainder of line 21 through "providers." on line 23

3. Page 10, line 18.

Following: "payor"

Insert: "knowingly"

4. Page 11, lines 13 through 16.

Following: "children." on line 13

Strike: remainder of line 13 through "birth." on line 16

Insert: "A health benefit plan must provide the coverage required by 33-22-301 to a newborn child covered by [sections 1 through 25]."

5. Page 30, line 4.

Insert: "NEW SECTION. Section 32. Codification instruction.

[Sections 1 through 25] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 1 through 25]."

Renumber: subsequent sections

-END-


Amd. Coord.
Sec. of Senate

401530SC.SRF

Amendments to SB 402

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 2/16/95

FILE NO. SB 402

page 11

line 13 NEW SECTION Section 16. Newborn Children. (Strike all)

then add: A health benefit plan shall provide the

- (1) coverage required by 33-22-301 to a newborn child covered by [Sections 1 through 26]

Page 1 Statement of Intent. Strike "." after "services";

line 21 and ^{strike} the entire second sentence, then add:

- (2) "TO ADOPT RULES FOR EXPEDITED PROCEDURES."

Page 10 insert: "KNOWINGLY" between "payor" and

line 18 "violating".

- (3)

Amendments to SB402

Page 30:

④

Following: line 8

Insert: "NEW SECTION. Section 34. Codification instruction

[Sections 1 through 25] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [Sections 1 through 25].

Renumber: subsequent section.

DATE 2/16/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 308 SR 16
SB 340 SR 402

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Gene Jarussi	Self	SB 308	X	
Anthony Proctor	Sec of State	SB 340	✓	
David Dietert	State Bar	SB 340	-	
Mac Stevens	Self	SB 340	✓	
Georgine J. Lenmark	Am. Ins. Ass'n	SB 308		✓
Frank Sprague	Sen. # 6	SB 308	✓	
Nike Cook	Self	SB 308	✓	
Charles R. Brooks	Blgs Chamber	SB 340	✓	
Greg Van Horssen/jnt	Att. State Farm	SB 308		✓
Kate Cholera	MT Women's Lobby	SB 402	✓	
Russell B Hill	MT Trial Lawyers	SB 308		✓
MA Winkler	SRS-CSTO	SB 402		
Tom Harrison	MT Soc of CPA's	S-340	✓	
Jim Tutwiler	MT Chamber Comm	SB 340	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bm McNabb	Mont. Tech. Council	SB340	✓	
David Scott	Dept Labor & Industry	SB340	✓	
Ron Kunik	MMAP	SB402	✓	
Ed Gorman	MMAP	SB402	✓	
Beth Baker	Dept of Justice	SB16	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE JUDICIARY

Page 12

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

	2/20	3/07		CONCUR	3/15	VOTE: 19-0		3/16
SB0372	STANG, BARRY		STATE REIMBURSEMENT FOR EMPLOYEES' TIME ANSWERING SUBPOENAS					
	2/27	3/09	POSTPONE ACTION 3/9	CONCUR AS AMENDED	3/15	VOTE: 17-2		3/16
SB0402	ECK, DOROTHY		MEDICAL SUPPORT ORDERS IN DIVORCE AND OTHER PROCEEDINGS					
	2/22	3/06		CONCUR AS AMENDED	3/13	VOTE: 16-2		3/13
SJ0010	HARDING, ETHEL		RESOLUTION - URGE CONGRESS TO DIVIDE 9TH CIRCUIT COURT OF APPEALS					
	2/15	3/10		CONCUR	3/21	VOTE: 15-4		3/22
SJ0012	HARDING, ETHEL		URGE CONGRESS TO LIMIT SUCCESSIVE PETITIONS FOR FED. WRITS OF HABEAS CORPUS					
	2/20	3/10		CONCUR	3/10	VOTE: 18-0		3/10
SJ0016	LYNCH, J. D.		URGE CONGRESS TO ENACT MEANINGFUL REFORMS TO LIMIT DEATH PENALTY APPEALS					
	2/20	3/20		CONCUR	3/21	VOTE: 17-0		3/22

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 6, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 340, SB 229, SB 402, HB 517
Executive Action: NONE

REP. GRIMES asked if the defendant doesn't know how much will be awarded in a noneconomic case, how they could profit from the delay.

Mr. Thueson answered that they set a reserve to cover economic and noneconomic damages which is invested until it is paid. He believed that in fairness legitimate damages any citizen was entitled to should be subject to interest from the day of the injury.

REP. GRIMES referred to page 1 where it was stated that interest would accrue on damages awarded by a verdict. He asked if damages awarded by a verdict were the same as damages received by the plaintiff.

REP. KOTTEL replied that damages received by the plaintiff in settlement have not been awarded by verdict.

REP. GRIMES asked if a cap were applied to that award would the interest be on the cap or on the award.

REP. KOTTEL said it only made sense to her that it would be only interest awarded on what the plaintiff would actually receive and the cap would also cap the interest.

{Tape: 2; Side: A; Approx. Counter: 27}

Closing by Sponsor:

REP. KOTTEL closed by summarizing the points made in the question and answer period.

{Tape: 2; Side: A; Approx. Counter: 33.2}

HEARING ON SB 402

Opening Statement by Sponsor:

SEN. DOROTHY ECK, SD 15, introduced SB 402 which had been named the Montana Medical Support Reform Act. This bill intended to provide access to medical care for children by assuring wherever possible that the parents in a separation or divorce will make payments for the child's health care and that they will not become the responsibility of the Medicaid system. This comprehensive bill was designed to address many sections of law to provide a system whereby a medical support order is a part of every child support order. It would not rule out the use of Medicaid, but it would not allow parents who have insurance or the means for it to rely on Medicaid to pay for their child's health care. She said that there would be some clarifying amendments.

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Child Support Enforcement Division, Department of Social and Rehabilitation Services (SRS), went through each of the parts of the bill in detail to provide understanding to the committee about how it would work. She said that the bill addressed providing the state's children with adequate insurance coverage without adding to the costs of Medicaid, providing health care providers with consistent guidance as to how to deal with divided families and provided courts with the means to address medical support without unnecessary expense or delay.

The federal government mandated the passage of the Omnibus Budget Reconciliation Act (OBRA) in 1993 to assure medical support for the nation's children, she said. With SB 402 they saw an opportunity to incorporate the provisions of OBRA while making it work for Montana. She described the process and entities involved in gathering the information for drafting the bill.

{Tape: 2; Side: A; Approx. Counter: 52}

Mary Alice Cook, Montana Advocates for Children, strongly supported the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BILL TASH asked where savings would result.

Ms. Wellbank said they would result from having children who were on Medicaid go off Medicaid because they were now covered by the parents.

REP. TASH asked if there was a difference in the way fees were assessed through SRS.

Ms. Wellbank said there weren't any fees in the bill. The fiscal note related to the fact that there are some children now receiving Medicaid benefits whose parents can well-afford to cover them, but perhaps the mother, without child support from the father, is eligible for Medicaid. Some divorce decrees provide that if a child is eligible for Medicaid, the father doesn't need to provide insurance coverage. The bill would eliminate that provision.

REP. ELLEN BERGMAN asked why had it just now been decided that these parents can afford to pay.

Ms. Wellbank said that all along they are required to pay, but this bill would set certain provisions to give the custodial parent more access to the insurance. Previously the obligated parent was obligated to enroll the child, but the custodial parent could never get reimbursement. It also would provide that Medicaid is not the primary insurer.

REP. BERGMAN asked if she thought because the court decided the parents need to have their own insurance that they will.

Ms. Wellbank said the Representative was right that responsibility cannot be legislated but that this would require the court to take positive action and to be sure there was a medical insurance order where before there may not have been.

REP. MC GEE did not see included in the definitions sections about a plan administrator while the text of the bill included a plan administrator. He asked what a plan administrator would be.

Ms. Wellbank said that it was a term for the insurance industry and it would be the entity which would determine whether benefits are paid under the plan and would make the payments. For instance, Blue Cross/Blue Shield acts as the administrator for the state insurance plan.

CHAIRMAN CLARK resumed the chair.

REP. MC GEE asked if the plan administrator could be the employer.

Ms. Wellbank said it normally would not be the employer unless it was a large employer which administered its own plan.

REP. MC GEE referred to section 13 through subsection (4) and his understanding that it was required by OBRA.

Ms. Wellbank said she was not sure whether 4(a) or (b) were required by OBRA. She said 4(c) was not.

REP. MC GEE asked if section 21 on page 12 of the bill was required by OBRA.

Ms. Wellbank said it was not but the state felt they needed some means of enforcement. She said the discharge clause 4(a) in section 13 was not required by OBRA nor was 4(b).

REP. KOTTEL discussed line 13 under subsection 4(a) asked if it was her opinion even if it were eliminated, current Montana law already covered that provision.

Ms. Wellbank said it could be stricken for that reason.

{Tape: 2; Side: B}

REP. HURDLE asked for a description of OBRA.

Ms. Wellbank described OBRA.

REP. BOHARSKI discussed sections 16, 17 and 18 as appearing to be new mandated benefits under Montana insurance law. He did not understand what they would provide and asked how they would amend the insurance code.

Ms. Wellbank answered that 16 and 17 just referenced back to the insurance code and would not expand or limit the provisions of the insurance code. Section 18 provided that a plan cannot discriminate against a child or refuse to enroll a child for certain reasons.

REP. BOHARSKI asked if to her knowledge there were any health plans in the state which currently discriminated for any of the listed reasons.

Ms. Wellbank replied there were none to her knowledge, but these were mandatory provisions of OBRA.

REP. SOFT reflected on the testimony that the savings would be between \$40,000 and \$50,000 per year.

Ms. Wellbank confirmed that that was general fund savings for the first two years and then biennium after that. She said they did not know what the long-term savings would be, but that it could be more.

REP. SOFT said the fiscal note showed that they would have to expend about \$120,000 to do it and wanted to know where the savings would come from.

Ms. Wellbank said there were two different divisions involved. The Child Support Enforcement Division would need to add some people for the increase in hearings and also to work with the insurers to determine what benefits were available. But it would save the other division (Medicaid) money.

REP. SOFT and Ms. Wellbank continued to work through the effect of the bill in savings to SRS. The net impact considered the cost to the one division with the savings to the other division.

REP. BRAD MOLNAR asked if there was a provision for an uninsurable youth.

Ms. Wellbank said it did not mandate that children who are not covered currently for pre-existing conditions be covered. For example, if paternity is established a year following birth, it would not require the insurer to cover that child if it had a pre-existing condition which would not be covered.

REP. MOLNAR asked about the provision concerning joint custody.

Ms. Wellbank said it basically set forth certain provisions whereby the obligated parent would pay child support, but the custodial parent might have a better insurance plan available. The bill contemplated that the custodial parent could get insurance if that happened. In a split custody situation, the judge or administrator would take those facts into account. She could not envision the obligation switching back and forth for each period of custody. One parent would be required to obtain and maintain the insurance.

REP. MOLNAR pointed out a \$100 minimum in lieu of insurance on page 26, line 6.

Ms. Wellbank said there is a provision in OBRA which requires parents to pay even up to \$50 to reimburse Medicaid if they do not have coverage available but can afford the \$50 payment per month. The money would go into the general fund to offset Medicaid. The judge can order anything that is reasonable. She described section 6 and under section 7 where the \$50 per month was discussed.

REP. MOLNAR asked if the fiscal note took into consideration the lack of the \$100 or \$50. He was concerned that they were generating a lot of work to make \$40,000 or \$50,000.

Peggy Probasco, SRS, said they were talking about a \$100 penalty being replaced with a \$50 payment which would actually go to Medicaid to help reimburse them. There was also a penalty section in this bill in addition to that. Currently, they could charge up to \$200 for people who fail to enroll their children when they can enroll them. This would provide for the ability to make them pay toward Medicaid, but also for a penalty if they have insurance available but do not secure it. It also would provide the ability to go to the employer or insurer to enroll the child. This would provide more savings in that if they don't have insurance available, they could get the \$50 back to Medicaid which is not the penalty. The penalty would be an additional amount collected.

REP. MOLNAR asked if the income from these provisions was in the fiscal note.

Ms. Probasco said she believed it was.

REP. ANDERSON asked if they were spending state dollars to save federal dollars.

Ms. Wellbank said they were spending federal dollars and general fund to save general fund. Ultimately it would save state general fund.

REP. ANDERSON asked if the ongoing \$81,000 and \$39,000 were paid according to the ratios showed on the fiscal note to fund the positions.

Ms. Wellbank said that right now the Child Support Enforcement Division does not use general fund, so it would all be state special revenue and federal funds considered; 66% federal and 34% state special.

REP. ANDERSON said he did not believe the savings came out to that ratio.

Ms. Wellbank said that Medicaid was funded differently from child support. She said the \$50 was not reflected in the fiscal note because they could not pinpoint what that would be or the amount of outstanding court orders there currently are.

REP. MC GEE redirected the attention to section 13, page 10, line 14 and asked as an employer what their course of action would be in discrimination.

Ms. Wellbank said the employer may not discriminate simply if the intent were because the person had a medical support order.

REP. MC GEE said it read that the employer could not take any disciplinary action against an obligated parent who might be uncooperative.

Ms. Wellbank said the section was not required by OBRA and she had no strong feeling that it needed to be included.

REP. SOFT, Ms. Wellbank and Terry Frisch returned to the fiscal note and discussed his enumerated questions to estimate the annual cost and savings and their calculations in reaching the figures.

{Tape: 2; Side: B; Approx. Counter: 27.3}

REP. BOHARSKI asked what the funding source was for the state special fund.

Ms. Wellbank said state special revenue was what the division collects from receiving federal incentives on the amount of AFDC collections plus any child support assigned to the state as a condition of AFDC that is collected.

REP. BOHARSKI asked for comments on sections 16, 17 and 18 of the bill.

Mr. Frisch discussed those sections to the best of his understanding.

REP. BOHARSKI proposed an example to attempt to get an answer to the question that involved a child with a pre-existing condition where the court would decide that a parent who had not previously carried them on their insurance should now provide the insurance. He asked if the pre-existing condition clause under the new insuring parent's insurance be waived.

Mr. Frisch answered that a plan which did not provide for enrollment of people with pre-existing conditions would not have to take the child.

REP. MOLNAR asked if it was a new mandate on insurance companies on page 11, section 16.

Ms. Probasco said it was not a new mandate. OBRA requires sections relating to newborns and adopted children. They did not want to expand the coverage insurance companies are required to provide children in the state, so they referred to the existing insurance code. She clarified the process and the insurance code.

REP. MOLNAR said he was reading it that if there is a health benefit plan now and it did not include a provision for newborn children but was a small risk policy, that it must be reissued with that provision included.

Ms. Probasco clarified that when there is a policy which has been legally sold in the state that did not cover newborn children, this section would not require that coverage. The only thing that this statute would do is to expand the class of people who have to be covered.

REP. MOLNAR asked what the cost to insurer and insured was to make those premiums with the expansion of class.

Ms. Probasco said she did not know. Those insurers who worked with them during the drafting of the bill seemed to have adjusted to cover those provision.

REP. MOLNAR asked if she would assume that it would be greater than the \$50,000 savings.

Ms. Probasco said she did not know.

REP. SOFT continued to question the fiscal note and asked for a new fiscal note which would separate the state and the federal dollars.

SEN. ECK thought it was a good issue to address and said she would ask for that.

REP. MC GEE referred to section 13 on the bottom of page 9 and asked for clarification.

Ms. Wellbank said the Consumer Credit Protection Act sets forth certain percentages to be withheld for debts from a paycheck. It would range from 30% to 65% depending upon the debt and circumstances. This was saying that an employer who provides medical insurance could be required to withhold the premium but if the premium coupled with the child support they are ordering

would exceed the set percentage, the employer should not withhold the premium.

REP. MC GEE asked how the employer would know.

Ms. Wellbank agreed that they would have to read the Consumer Credit Protection Act and said that any kind of garnishment would come under the same conditions. The employer could call the Child Support Enforcement Division for help in interpretation.

Closing by Sponsor:

SEN. ECK recognized this was a complex issue but very important.

{Tape: 2; Side: B; Approx. Counter: 46.3}

HEARING ON SB 229

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, remarked that one of the most feared and effective tools that a law enforcement official has in drug trafficking operations is the ability to seize assets used in those operations. He noted that in nine months in 1994, the fiscal note reflected \$500,000 net realized to be put into various drug task force programs around the state. This bill would provide the opportunity to put the asset seizure portion into the criminal code.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, said this bill addressed a situation which arose from a Ninth Circuit Court decision in September of 1994. In the past dealing with these cases by having a civil proceeding to seize the property used in drug trafficking following the criminal proceeding was deemed to be double jeopardy because the person was required to defend the act twice. This bill would provide for the combination of the two proceedings and bring Montana's law in line with the Ninth Circuit Court decision. He said that Sheriff O'Reilly representing the Montana Sheriff's and Peace Officer's Association supported the bill. He presented testimony from Karen Townsend, Deputy County Attorney for Missoula County.

EXHIBIT 2

Marty Lambert, Montana County Attorneys Association, Chief Deputy Attorney Gallatin County, gave a practical application of the decision of the ninth circuit opinion and how this legislation would relieve the situation. He outlined the various provisions of the bill.

{Tape: 2; Side: B; Approx. Counter: 58.9}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/6/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ 8:15	✗	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓ 11:00		✓
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓ 8:10	✗	
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓ 8:20	✗	
Rep. Liz Smith	✓ 8:15	✗	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓ 8:10	✗	
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 3/6/95

BILL NO. SB 402

SPONSOR(S) SEN. ECK

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
M. A. Willbank	SRS-CSED	✓	
Peggy Probasco	SRS-CSED	✓	
Marv Alice Cook	adv. for MTS children	✓	
Kate Chukman	MT Women's lobby	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 13, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: NONE
Executive Action: SB 133 TABLE
SB 185 BE CONCURRED IN AS AMENDED
SB 189 BE CONCURRED IN AS AMENDED
SB 212 BE CONCURRED IN
SB 402 BE CONCURRED IN AS AMENDED
HB 517 RECONSIDER ACTION
HB 517 RECONSIDER ACTION POSTPONED

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SB 402

Information: EXHIBIT 1 was supplied to the committee for information as requested by REP. LOREN SOFT.

Motion: REP. BILL CAREY MOVED SB 402 BE CONCURRED IN.

Motion: REP. DANIEL MC GEE MOVED TO AMEND SB 402. EXHIBIT 2

Discussion: REP. MC GEE explained the amendments as being concurrent with the intent of the bill to provide that parents are responsible for medical care for their children. Further the amendments would define a program administrator and would remove the language which would make an employer responsible for any penalties.

REP. JOAN HURDLE asked how this would apply if the employer and the parent were friends.

REP. MC GEE said that the responsibility would fall on the parent. An employer may or may not be a friend to the parent but under the present language the employer would be made an administrative arm of the agency without any judicial process.

REP. HURDLE asked if he was assuming from the amendment that parents would pay voluntarily with no remedial actions needed.

REP. MC GEE answered that with the amendment the parent would still be responsible and held accountable by the department and penalized for any failure to pay and the employer would still withhold from the employee's pay, but his amendments would provide that the employer would not be penalized. The regulation as written provided that the department could discipline the employer, but that the employer could not discipline the employee who had the problem and the responsibility.

REP. HURDLE said she was worried if the employer did not have to collect the medical coverage payment and did not want to, he could fire the employee if this provision were struck; or he could ignore the order completely. Because employers are depended upon to collect this and other withholdings, she did not see how they could expect it without the almost forced cooperation of the employer.

REP. MC GEE said that was exactly his argument. He said the employers had no representation with those agencies requiring the withholding and there was no due process for the employers. He asserted that this amendment would provide the due process.

REP. DEBBIE SHEA asked for clarification about the intent of the amendment.

REP. MC GEE said that although he did not like employers being told to withhold, he was not striking that section. He was making provision for the employer to deal with the employee in areas of discipline or discharge.

REP. SHEA asked why the provision was in the bill.

REP. MC GEE answered that it was because it is easier to collect it from an employer than from a parent.

REP. DUANE GRIMES said his understanding of the result of striking that section was that it would provide for discrimination against an employee because they had a medical support order. He did not see that it limited an employer at all from taking any action against an employee for other than a medical support order. He asked for the sponsor's intention.

REP. MC GEE proposed that if there were an employee who was disgruntled about having to pay the insurance the employee could develop an attitude problem because of it which would reflect on his work and behavior in the work place. He said that under the bill as written, the employer would not have the freedom to exercise disciplinary action.

REP. GRIMES suggested that to solve the problem, language could be added to say that it was not construed to mean that normal disciplinary procedures couldn't be enforced for behavioral and performance problems.

REP. ELLEN BERGMAN asked if the employee's job would be protected no matter what he was doing or not doing so that the employer did not have any recourse even if he didn't pay the support.

REP. MC GEE explained again the intent behind his amendment.

REP. LIZ SMITH suggested that since the section did not fall under a federal mandate that they completely revise the section and instead of making it a penalty, offer an incentive to the employer through a tax credit on wages withheld to provide medical support. She felt this would stimulate hiring and therefore stimulate payment of the support.

REP. WILLIAM BOHARSKI did not agree with REP. SMITH, did agree with REP. MC GEE and felt the concerns of REP. GRIMES were addressed on lines 16 and 17. He said he would support striking that subsection, but he did not think it would make it any stronger than saying that the sole proof was on the parent that that was the only reason for discharge or discipline. He also asked what the result would be in changing the plan administrator definition.

REP. MC GEE said the plan administrator was not defined in the act at all.

REP. BOHARSKI asked for a practical application of the duties and responsibilities of the plan administrator.

John MacMaster explained that the written language at the bottom of the amendment meant they were striking part of the bill and inserting new language. Instead, when the definition was written, he corrected it in handwriting during the draft. The term is not currently defined in the bill but the amendment would define it.

REP. DEB KOTTEL read subsection 4 as a discrimination section and saw it as parallel to other statutes which say that an employer can discharge because of a workers compensation claim. She said it was parity under the law for public policy reasons. She believed that subsection (b) on line 16 could be misinterpreted and suggested an amendment after "that" strike "a" and insert "the issuance of the medical support order was the sole reason of the employer's action." Additionally on line 19, strike "not less than" and insert "not more than." She explained the reasons behind the amendments.

REP. MC GEE referred to line 15 and asked if that language should also be changed to conform to the proposed language above.

REP. KOTTEL thought so and referred the conforming language to Mr. MacMaster to work out.

REP. BOHARSKI and REP. KOTTEL continued to define the language and the intent was determined to limit that the action against an employer could only be brought if discharge or failure to hire was based on discrimination because of the medical support order.

Mr. MacMaster suggested inserting the word, "solely," after "parent" on line 15.

REP. MC GEE accepted that as a friendly amendment to amendment number 3.

Motion: REP. KOTTEL MOVED A SUBSTITUTE AMENDMENT, LINE 14, SUBSECTION 4, SUBSECTION (A), "A PAYOR WHO IS AN EMPLOYER MAY NOT DISCHARGE, REFUSE TO EMPLOY OR TAKE OTHER DISCIPLINARY ACTION AGAINST AN OBLIGATED PARENT SOLELY FOR BEING UNDER A MEDICAL SUPPORT ORDER." LINE 16, "THE OBLIGATED PARENT HAS THE BURDEN OF PROVING THAT" AND (DELETE A), THEN INSERT "THE ISSUANCE OF THE" SUPPORT ORDER WAS THE SOLE REASON FOR THE EMPLOYER'S ACTION. LINE 19, "THE MEDICAL SUPPORT. THE TRIBUNAL MAY IN ADDITION IMPOSE A CIVIL PENALTY OF NOT" STRIKE "LESS" AND INSERT "MORE THAN \$150."

Motion: REP. BOHARSKI MOVED A SUBSTITUTE AMENDMENT TO REP. KOTTEL'S SUBSTITUTE AMENDMENT TO INSERT THE PERIOD FOLLOWING \$150 AND STRIKE THE BALANCE OF THE SENTENCE.

Discussion: REP. KOTTEL accepted the substitute amendment and REP. MC GEE agreed to all of the substitute amendments to his original amendment. REP. CAREY opposed the substitute amendment because he thought employers would just pay the \$150 and would not enforce the withholding.

REP. KOTTEL agreed but did not oppose the substitute amendment because there is a wrongful termination statute in Montana which would allow civil remedy for the individual to sue the employer.

REP. MC GEE explained his support of the amendments and reiterated that the remedy was in current statute.

REP. GRIMES supported the amendment although he thought it was much ado about nothing since other statutes covered it. He said that there were termination issues and recruitment issues which would take precedence over all of these issues.

Vote: The motion on the substitute amendment carried 13 - 5, REPS. WYATT, CAREY, HURDLE, SHEA and MC CULLOCH voting no.

Vote: The motion on the Kottel amendment carried 18 - 0.

Discussion: REP. CAREY asked for further discussion on amendment number 1 by REP. MC GEE.

REP. MC GEE said that during testimony the purpose was stated as making parents responsible. The other statement about whether or not the parent voluntarily does so reflected language in the bill.

REP. CAREY wondered about the employer using this as a way to absolve themselves from the responsibility to withhold.

REP. MC GEE felt it was important to state the intent clearly.

REP. CAREY asked what would happen if the parent could not pay and that parent is ultimately responsible.

REP. MC GEE said if they were not able to pay, they would not be earning a wage and therefore not employed and so it would not affect the employer. The parent is ultimately responsible whether or not they agree to it or can afford it.

REP. SHEA said she did not think the goal was to make the parent ultimately responsible but that there needed to be child support. She did not think the agency was trying to teach them a lesson but that somebody needs to take the responsibility.

REP. CHRIS AHNER asked if she was saying that the employer was ultimately responsible.

REP. SHEA said the ultimate thing was to take care of the kids and somebody has to do it.

REP. AHNER re-asked her question and REP. SHEA said the department was not lecturing or trying to teach values to a parent, but only trying to collect money for the kids.

REP. AHNER clarified that she wanted to be sure that REP. SHEA was not saying that if the parent didn't pay, the employer should.

REP. MC GEE said it was already in the language in the law under the statement of purpose and his amendment number 1 simply reiterated it.

Without objection from the committee, Mary Ann Wellbank, Department of Social and Rehabilitation Services, said that she did not remember that language as being in the bill but she did reiterate her testimony that parents are ultimately responsible and if the parents do not pay for medical support and go on Medicaid, the state would have to pay. She said the means of enforcement is through the employers' withholding of the premiums.

REP. LINDA MC CULLOCH asked where the new language came from for amendment number 2 and if it was consistent with other existing codes dealing with the same thing.

Mr. MacMaster said the language came from the Department of Family Services (DFS) agreed upon during a staff conference with him.

REP. MC CULLOCH asked if "written by that entity" stayed in the amendment and Mr. MacMaster said it did not.

REP. MC CULLOCH asked for a further explanation of amendment number 4 on page 12, line 17.

REP. MC GEE said it was designed to go back to the ultimate responsibility of the parent.

REP. MC CULLOCH was concerned that it would let the employer off the hook and REP. MC GEE re-explained that it was taken care of under section 4.

REP. CLIFF TREXLER said he still had problems with the wording, "or take other disciplinary action against" and asked for clarification. He and REP. MC GEE continued to discuss the ramifications of this language in cases where employees were not doing their job because of child support disputes.

REP. GRIMES questioned REP. MC GEE about his amendments on page 12 and asked how much the employer's maximum liability would be.

{Tape: 1; Side: A; Approx. Counter: 62.6}

REP. LOREN SOFT explained the disciplinary process between employer and employee based on work performance and just cause terminations versus what this bill proposed.

Motion/Vote: REP. SHEA MOVED THAT AMENDMENTS 1 AND 2 BE SEGREGATED FROM AMENDMENT 4. The motion carried unanimously.

Vote: The motion on amendments 1 and 2 carried unanimously.

Discussion: REP. KOTTEL described her reasons for opposing amendment number 4. She said she wanted judges to be held to a \$25-per-day civil penalty so that excessive penalties would not be imposed on employers. She planned to oppose the amendment.

{Tape: 1; Side: B}

Without objection from the committee, Ms. Wellbank addressed the issue. She said that if the court issued the order to the employer, then the court and not the administrative agency could find the employer in contempt. In those types of orders, it might be an order to the obligor rather than to the employer and therefore, contempt would not apply. Furthermore, the agency would have no authority to make them comply without it.

Mr. MacMaster explained that he did not view section 21 on page 12 as being a contempt section but that they could be found in contempt in addition to imposing the civil penalty and he thought that was the reason that section was included. Line 18 on page 10 dealt with the contempt issue, but the section on page 12 dealt with the possibility of an additional civil penalty. The court can always find someone in contempt for disobeying the order whether it is stated in any bill.

REP. KOTTEL asked what the likelihood was that the wording on lines 20 and 21 meant a predisposition of a civil penalty rather than only a contempt charge. Without that wording, the court could only impose a contempt hearing. With a civil penalty provision, the penalty can be imposed over and over without the extended contempt hearing action. She asked if it offered the court the option to avoid the contempt action while allowing the civil penalty to be imposed.

Mr. MacMaster agreed and said he could not imagine a judge imposing both penalties unless they thought the \$25 penalty under the bill was not enough.

REP. BOHARSKI recommended the withdrawal of the amendment and REP. MC GEE agreed.

Motion: REP. BOHARSKI MOVED TO AMEND THE TITLE ON LINE 7 TO STRIKE "ENACTING FEDERAL LEGISLATION AS REQUIRED;" STRIKE "NECESSARY" ON LINE 13 AND INSERT "APPROPRIATE." STRIKE "TO MAINTAIN ADEQUATE LEVELS OF FEDERAL FUNDING AND" ON LINE 14.

Discussion: REP. MC GEE opposed the amendment because he felt the language should reflect the real reason behind the bill.

Vote: The motion carried 14 - 4, REPS. SHEA, ANDERSON, HURDLE, and MC CULLOCH voted no.

Discussion: Mr. MacMaster explained a clean-up amendment.

Motion/Vote: REP. DIANA WYATT MOVED TO AMEND PAGE 24 LINES 12 THROUGH 14 TO BRING IT INTO CONFORMITY WITH SB 29. The motion carried unanimously.

Motion/Vote: REP. ANDERSON MOVED SB 402 BE CONCURRED IN AS AMENDED. The motion carried 16 - 2, REPS. SMITH and BOHARSKI voted no.

EXECUTIVE ACTION ON HB 517

Motion: REP. SHIELL ANDERSON MOVED TO RECONSIDER ACTION ON HB 517.

Discussion: CHAIRMAN CLARK explained to the committee that when the executive action was taken on HB 517, REP. ANDERSON was absent and his vote which was cast in his absence was cast in opposition to his wishes. Therefore, this would be the purpose to reconsider the action.

REP. ANDERSON explained this bill would allow for noncalculable (sic) damages to be paid back to the time of the complaint at 10% interest, the proceeds to go to the state. He said he was going to vote for the reconsideration motion and against the bill because he had a hard time reconciling interest being attached to the noncompensatory damages. He said that many times the noncompensatories came out at an undetermined amount and a included large spectrum of types of damages. He thought there would be a difficult time reconciling those damages with 10% interest thereon with the legislation which capped noncompensatory damages to \$250,000 for the purpose of making medical care more affordable.

He did not think 10% reflected the actual cost of money and that it was persuasive that when noncompensatory damages are awarded at the time of the verdict, they were often related back to the time of the complaint. For those reasons and for the reason of trying to curb the expense of noncompensatory damages, he reiterated his motion to reconsider.

REP. KOTTEL asked the committee to oppose the motion to reconsider. She expounded on her reasons and asked that she be given the chance to make her arguments on the floor of the House and let the bill be considered there.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/13/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 11:35	✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 402 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Kottel

And, that such amendments read:

1. Title, line 7.

Strike: "ENACTING FEDERAL LEGISLATION AS REQUIRED;"

2. Page 1, line 13.

Strike: "necessary"

Insert: "appropriate"

Strike: "enacting federally required legislation in order"

3. Page 1, line 14.

Strike: "to maintain adequate levels of federal funding and"

4. Page 1, line 17.

Following: "bills"

Insert: "; and

WHEREAS, parents should be held responsible for providing medical care for their children, whether or not the parents voluntarily do so"

5. Page 3.

Following: line 11

Insert: "(12) "Plan administrator" means the person or entity that assesses and collects premiums, accepts and processes claims, and pays benefits."

Renumber: subsequent subsections

Committee Vote:

Yes 16, No 2.

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March 13, 1995

Page 2 of 2

6. Page 10, line 15.

Strike: "for being under"

Insert: "solely because of the issuance of"

7. Page 10, line 16.

Strike: "a"

Insert: "the issuance of the"

8. Page 10, line 19.

Strike: "less"

Insert: "more"

9. Page 10, lines 19 through 23.

Strike: "and order" on line 19 through "fund" on line 23

10. Page 24, line 12.

Strike: "a temporary or final"

Insert: "an"

Strike: "for the periodic payment of a set".

11. Page 24, line 13.

Following: line 12

Strike: "or"

Insert: "a"

Strike: "of money"

Following: "funds for"

Insert: "temporary or final periodic payment of funds for"

12. Page 24, line 14.

Strike: "including" through "the child,"

-END-

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3/13/95

I request to be excused from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

nothing on

SENATE BILL/AMENDMENT	AYE	NO
<i>SB 402</i>	☒	
<i>McGee Amend</i>	☒	

Rep. *Tash*
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE March 13, 1995

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Anthony Curtis.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
SB 402		X
amendments	X	
HB 517		X
212	X	
189	X	
133 failed		
185	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Lo Smith
(Signature)

EXHIBIT 1
DATE 3/13/95
SB 402

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

MARCRACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
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3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

March 7, 1995

TO: Representative Bob Clark, Chair
House Judiciary Committee

FROM: Mary Ann Wellbank, Administrator
SRS Child Support Enforcement Division

RE: Senate Bill 402

Thank you for the hearing yesterday on this legislation. The purpose of this memorandum is to respond to Representative Soft's request for a more detailed explanation of the fiscal note, specifically where general fund savings would be achieved. I hope this information is helpful.

Overview:

The federal Omnibus Reconciliation Act of 1993 sets forth certain mandatory provisions that states must enact or risk loss of federal funding for the state medicaid program. SB 402 meets the requirements of OBRA, but also works for Montana. In developing this legislation, the CSED worked with the SRS Medicaid Division, the Insurance Commissioner's Office and the Department of Labor as well as representatives of industries impacted by this legislation, including Montana insurers, employer groups, such as the NFIB, and unions. We received a substantial amount of public input, and amended our working drafts accordingly to develop sound legislation that meets the needs of Montana families without creating unnecessary burdens on Montana employers and insurers.

The provisions of SB 402 are intended to conserve the expenditure of Medicaid funds and to ensure that children of separated parents have access to health care. This is done by attempting to assure that children of divorced or separated parents have access to reasonable health insurance coverage provided by their parents. The burden for health care will be taken off state and federal governments to the extent possible. The obligation to provide health insurance coverage will be enforced by the SRS Child Support Enforcement Division to a greater extent than is provided by existing law.

Fiscal Impact: Please refer to the attached chart.

The SRS Child Support Enforcement Division would hire three additional FTE to administer this legislation at a total cost of \$129,000 in the FY96 and \$120,000 in FY97, 66% of which would be federally funded. The remaining 34% or \$43,860 in FY96 and \$40,800 in FY97 would be from general fund. Presumably, if this bill is enacted, the Child Support Enforcement Division budget will be increased in the Appropriations Bill by \$43,860 general fund in FY96 and \$40,800 general fund in FY97.

The increases in the CSED budget would be more than offset by a decrease in the FY96 and FY97 SRS Medicaid budgets. The SRS Medicaid Division expects to achieve a savings in Medicaid Benefits of \$285,600 in FY96, 70% of which would be federally funded. The 30% general fund portion of this savings amounts to \$86,423. Presumably, if this bill is enacted, the Medicaid Services Division general fund budget will be decreased in the Appropriations Bill by these amounts.

The net general fund savings is therefore $\$86,423 - \$43,860 = \underline{\$42,563}$ in FY96 and $\$97,232 - \$40,800 = \underline{\$56,432}$ in FY97. A savings in federal funds is also achieved in the respective amounts of \$114,037 and \$137,218 in FY96 and FY97.

Additionally, failure to enact the mandatory provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1993 this session will result in severe financial sanctions to the state Medicaid program, which is 70% federally funded. The federal portion of the state medicaid budget is approximately \$350-400 million per year.

c: Senator Dorothy Eck, Sponsor
Members of House Judiciary Committee

FISCAL IMPACT SBO402:Expenditures/Benefits:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
FTE	3	3
CSED Personal Services	81,000	81,000
CSED Operating	39,000	39,000
CSED Equipment	9,000	0
Total Expenses	129,000	120,000
X FMAP Rate	.34	.34
General Fund Expense	43,860	40,800
Medicaid Benefits	(285,600)	(313,650)
X FMAP Rate	.3026	.3100
General Fund Savings	(86,423)	(97,232)
Total Expense	129,000	120,000
plus Total Savings	(285,600)	(313,650)
Net Total Savings	(156,600)	(193,650)
General Fund Expense	43,860	40,800
plus General Fund Savings	(86,423)	(97,232)
Net General Fund Impact	(42,563)	(56,432)

Funding:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
General Fund	(42,563)	(56,432)
State Special	0	0
Federal Fund	(114,037)	(137,218)
Total Funds	(156,600)	(193,650)
Net General Fund Impact:	(42,563)	(56,432)

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
Line 1	0	0
Line 2	0	0
Line 3	0	0
Line 4	0	0
Total	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: N/ALONG-RANGE EFFECTS OF PROPOSED LEGISLATION: N/ATECHNICAL NOTES: N/A

Amendments to Senate Bill No. 402
Third Reading Copy

Requested by Rep. McGee
For the Committee on the Judiciary

Prepared by John MacMaster
March 9, 1995

1. Page 1, line 17.

Following: "bills"

Insert: "; and

WHEREAS, parents should be held responsible for providing medical care for their children, whether or not the parents voluntarily do so"

2. Page 3.

Following: line 11

Insert: "(12) "Plan administrator" means ~~an entity that provides coverage for a child, as required by a medical support order, pursuant to a health benefit plan or under a health or medical insurance policy.~~" written by that entity

Renumber: subsequent subsections

3. Page 10, lines 14 through 23.

Strike: subsection (4) in its entirety

4. Page 12, line 17.

Strike: ", health benefit plan, employer, union, or other payor"

→ the person or entity
that assesses and collects
premiums, accepts and
processes claims, and
pays benefits